UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ALLIED SERVICES, LLC, d/b/a REPUBLIC SERVICES OF DEXTER
Employer

and Case 14-RC-192027

TEAMSTERS LOCAL 600
Petitioner

ORDER

The Employer's Request for Review of the Acting Regional Director's Decision and Order is denied as it raises no substantial issues warranting review.[1]

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[1]In denying review, we reject the Employer's contention that the scale operator, who voted subject to challenge, may be included in the unit only upon a showing that she shares an overwhelming community of interest with the drivers and heavy equipment operators. Throughout the proceeding, the Petitioner consistently sought the inclusion of the scale operator in the unit. By entering into a stipulated election agreement that provided for the scale operator to vote subject to challenge, the Petitioner in no way abandoned that position. Accordingly, the Acting Regional Director correctly found that the Petitioner's burden of proof is to show only that the scale operator shared a community of interest with the employees in the stipulated unit. As the Acting Regional Director noted, adoption of the Employer's position that the effect of the challenge provision was that the scale operator classification could be included in the unit only upon a showing that it shares an overwhelming community of interest with the stipulated inclusions would provide a disincentive for petitioners to enter into stipulated election agreements, because it would put them in a worse position than had they insisted on a pre-election hearing. We also find the Employer's reliance on *Odwalla, Inc.*, 357 NLRB 1608 (2011), is misplaced. *Odwalla*'s admonition--that the Board should treat the stipulated unit as the petitioned-for unit for purposes of applying *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934, enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013)--applies only where, as in *Odwalla*, it is the *nonpetitioning* party that seeks the inclusion of the classification(s) voting subject to challenge. See *Odwalla*, Inc., 357 NLRB at 1608, 1611 & n.27 (where the parties enter into a stipulated election agreement providing for an additional group of employees ("merchandisers") to vote subject to challenge and it is the nonpetitioning party that contends that the additional group must be added to the unit sought by the petitioner for the unit to be appropriate, we treat the stipulated unit as the petitioned-for unit for purposes of the analysis).

We also find that the Acting Regional Director correctly applied the two-step framework in *Specialty Healthcare*, in finding the petitioned-for unit, which included

operations employees and excluded maintenance employees, to be an appropriate unit. Under that framework, which adheres to well-settled precedent that the Board need find "only that the unit proposed is an appropriate, rather than the most appropriate unit," *Specialty Healthcare*, supra at 940 (emphasis in original), the Board first determines whether the petitioned-for employees are readily identifiable, and whether they share a community of interest. In appraising community of interest, the Board applies the following traditional factors: whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. If the Board finds that the petitioned-for unit has a community of interest, the Employer has the burden of demonstrating that the additional employees it seeks to include share an "overwhelming community of interest" with the petitioned-for employees, such that there "is no legitimate basis upon which to exclude" the additional employees from the unit. Id. at 944-946.

In this case, the petitioned-for unit includes operators who operate heavy equipment at the Employer's landfill, drivers who collect and transport waste to the landfill, and a scale operator who weighs and records the waste before drivers continue on to the landfill. These employees constitute a single department, work the same hours and operate out of the same building, share supervisors, regularly interact with each other, and all perform steps in the basic operation of the landfill. The excluded maintenance employees, conversely, perform a separate role by repairing the Employer's trucks and heavy equipment. The maintenance employees constitute a separate department with their own building and supervisors, work separate hours, have no interchange with unit employees, and only interact with unit employees in order to get basic information about equipment malfunction. We therefore find that the petitioned-for operations employees share a community of interest, and that the Employer has not established an overwhelming community of interest between the petitioned-for employees and the maintenance employees outside the petitioned-for unit. We note that applying the overwhelming community of interest standard to the maintenance employees, which the Employer concedes is the appropriate analysis, puts the Employer in the same position it would have been in had it declined to enter into a stipulated election agreement and the matter had been determined following a pre-election hearing, given that the petitioned-for employees are readily identifiable as a group and share a community of interest.

Chairman Miscimarra disagrees with the *Specialty Healthcare* standard. See *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 25-32 (2014) (Member Miscimarra, dissenting). Thus, Chairman Miscimarra does not join in or rely on any aspect of the majority's discussion of *Specialty Healthcare* and standards arising under that case. He nevertheless finds that the petitioned-for employees, including the operators, drivers and the scale operator (but excluding the maintenance employees) constitute an appropriate unit under traditional community-of-interest principles. Accordingly,

PHILIP A. MISCIMARRA, CHAIRMAN

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., September 11, 2017.

Chairman Miscimarra joins his colleagues in denying the Employer's Request for Review.